

criteria adopted by the Secretary at subpart C of this part.

(b) An ONC-ACB must provide the option for a Complete EHR to be certified solely to the applicable certification criteria adopted by the Secretary at subpart C of this part.

(c) *Gap certification.* An ONC-ACB may provide the option for and perform gap certification of previously certified Complete EHRs.

(d) *Inherited certified status.* An ONC-ACB must accept requests for a newer version of a previously certified Complete EHR to inherit the certified status of the previously certified Complete EHR without requiring the newer version to be recertified.

(1) Before granting certified status to a newer version of a previously certified Complete EHR, an ONC-ACB must review an attestation submitted by the developer of the Complete EHR to determine whether any change in the newer version has adversely affected the Complete EHR's capabilities for which certification criteria have been adopted.

(2) An ONC-ACB may grant certified status to a newer version of a previously certified Complete EHR if it determines that the capabilities for which certification criteria have been adopted have not been adversely affected.

(e) An ONC-ACB that has been authorized to certify Complete EHRs is also authorized to certify all EHR Modules under the permanent certification program.

§ 170.550 EHR Module certification.

(a) When certifying EHR Module(s), an ONC-ACB must certify in accordance with the applicable certification criteria adopted by the Secretary at subpart C of this part.

(b) An ONC-ACB must provide the option for an EHR Module(s) to be certified solely to the applicable certification criteria adopted by the Secretary at subpart C of this part.

(c) *Gap certification.* An ONC-ACB may provide the option for and perform gap certification of previously certified EHR Module(s).

(d) An ONC-ACB may provide an updated certification to a previously certified EHR Module(s).

(e) *Privacy and security certification.* EHR Module(s) shall be certified to all privacy and security certification criteria adopted by the Secretary, unless the EHR Module(s) is presented for certification in one of the following manners:

(1) The EHR Modules are presented for certification as a pre-coordinated, integrated bundle of EHR Modules, which would otherwise meet the definition of and constitute a Complete EHR, and one or more of the constituent EHR Modules is demonstrably responsible for providing all of the privacy and security capabilities for the entire bundle of EHR Modules; or

(2) An EHR Module is presented for certification, and the presenter can demonstrate and provide documentation to the ONC-ACB that a privacy and security certification criterion is inapplicable or that it would be technically infeasible for the EHR Module to be certified in accordance with such certification criterion.

(f) *Inherited certified status.* An ONC-ACB must accept requests for a newer version of a previously certified EHR Module(s) to inherit the certified status of the previously certified EHR Module(s) without requiring the newer version to be recertified.

(1) Before granting certified status to a newer version of a previously certified EHR Module(s), an ONC-ACB must review an attestation submitted by the developer(s) of the EHR Module(s) to determine whether any change in the newer version has adversely affected the EHR Module(s)' capabilities for which certification criteria have been adopted.

(2) An ONC-ACB may grant certified status to a newer version of a previously certified EHR Module(s) if it determines that the capabilities for which certification criteria have been adopted have not been adversely affected.

§ 170.553 Certification of health information technology other than Complete EHRs and EHR Modules.

An ONC-ACB authorized to certify health information technology other than Complete EHRs and/or EHR Modules must certify such health information technology in accordance with the

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applicable certification criterion or certification criteria adopted by the Secretary at subpart C of this part.

§ 170.555 Certification to newer versions of certain standards.

(a) ONC-ACBs may certify Complete EHRs and/or EHR Module(s) to a newer version of certain identified minimum standards specified at subpart B of this part if the Secretary has accepted a newer version of an adopted minimum standard.

(b) *Applicability of an accepted newer version of an adopted minimum standard.*

(1) ONC-ACBs are not required to certify Complete EHRs and/or EHR Module(s) according to newer versions of an adopted minimum standard accepted by the Secretary until the incorporation by reference provision of the adopted version is updated in the FEDERAL REGISTER with a newer version.

(2) Certified EHR Technology may be upgraded to comply with newer versions of an adopted minimum standard accepted by the Secretary without adversely affecting the certification status of the Certified EHR Technology.

§ 170.557 Authorized certification methods.

An ONC-ACB must provide remote certification for both development and deployment sites.

§ 170.560 Good standing as an ONC-ACB.

An ONC-ACB must maintain good standing by:

(a) Adhering to the Principles of Proper Conduct for ONC-ACBs;

(b) Refraining from engaging in other types of inappropriate behavior, including an ONC-ACB misrepresenting the scope of its authorization, as well as an ONC-ACB certifying Complete EHRs and/or EHR Module(s) for which it does not have authorization; and

(c) Following all other applicable Federal and State laws.

§ 170.565 Revocation of ONC-ACB status.

(a) *Type-1 violations.* The National Coordinator may revoke an ONC-ACB's status for committing a Type-1 violation. Type-1 violations include viola-

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tions of law or permanent certification program policies that threaten or significantly undermine the integrity of the permanent certification program. These violations include, but are not limited to: False, fraudulent, or abusive activities that affect the permanent certification program, a program administered by HHS or any program administered by the Federal government.

(b) *Type-2 violations.* The National Coordinator may revoke an ONC-ACB's status for failing to timely or adequately correct a Type-2 violation. Type-2 violations constitute non-compliance with § 170.560.

(1) *Noncompliance notification.* If the National Coordinator obtains reliable evidence that an ONC-ACB may no longer be in compliance with § 170.560, the National Coordinator will issue a noncompliance notification with reasons for the notification to the ONC-ACB requesting that the ONC-ACB respond to the alleged violation and correct the violation, if applicable.

(2) *Opportunity to become compliant.* After receipt of a noncompliance notification, an ONC-ACB is permitted up to 30 days to submit a written response and accompanying documentation that demonstrates that no violation occurred or that the alleged violation has been corrected.

(i) If the ONC-ACB submits a response, the National Coordinator is permitted up to 30 days from the time the response is received to evaluate the response and reach a decision. The National Coordinator may, if necessary, request additional information from the ONC-ACB during this time period.

(ii) If the National Coordinator determines that no violation occurred or that the violation has been sufficiently corrected, the National Coordinator will issue a memo to the ONC-ACB confirming this determination.

(iii) If the National Coordinator determines that the ONC-ACB failed to demonstrate that no violation occurred or to correct the area(s) of non-compliance identified under paragraph (b)(1) of this section within 30 days of receipt of the noncompliance notification, then the National Coordinator may propose to revoke the ONC-ACB's status.